IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 93 of 1989

For Approval and Signature:

HONOURABLE MR.JUSTICE H.B.ANTANI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether Their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the Civil Judge?

==========

GIRISHBHAI N PANDYA - Appellant
Versus
STATE OF GUJARAT - Opponent

==========

Appearance :
MR KJ SHETHNA for Appellant.
MR IM PANDYA, ADDITIONAL PUBLIC PROSECUTOR for Opponent.
==========

CORAM : HONOURABLE MR.JUSTICE H.B.ANTANI

Date : 21st, 23rd, 24th and 28th March, 2006

ORAL JUDGMENT

1. The present appeal is preferred by the appellant-original accused under Section 374 of the Code of Criminal Procedure, 1973 against judgment rendered by Special Judge, Ahmedabad in Sessions Case No. 3 of 1988,

by which the appellant was convicted for the offences punishable under Section 5(1)(d) read with Section 5 (2) of the Prevention of Corruption Act, 1947 as well as under Section 161 of the Indian Penal Code, 1860 and imposed sentence of RI for 1 year and fine of Rs.200/- (Rupees Two Hundred Only), in default RI for 2 months, under Section 5 (1) (d) read with Section 5 (2) of the Prevention of Corruption Act. Further, the appellant was imposed sentence of RI for a period of 1 year and fine of Rs. 200/- (Rupees Two Hundred Only), in default RI for 2 months, under Section 161 of the Indian Penal Code. The learned Judge was also pleased to pass the order that the substantive sentences shall run concurrently.

2. The short facts giving rise to the present appeal are stated hereinbelow:

(i) Complainant Babulal Krishanji Marwadi, was residing in Saraswati *Chawl*, Amdapura whereas Chappanbhai Roshanbhai was residing in Ratilal's *Chawl* opposite the *chawl* in which the complainant was residing. On the date of the incident, Chappanbhai Roshanbhai constructed a latrine under Scheme 80-20. He was required to obtain a water connection in the latrine. He, therefore, entrusted the work to the complainant. The appellant

came for the purpose of enquiry after complainant submitted the form in the prescribed format to the Ahmedabad Municipal Corporation. The appellant was working as a Ward Inspector in the Municipal Corporation. He, therefore, gave direction to the complainant to see that the due amount of Municipal Tax was paid by him. The complainant also saw to it that on 02-12-1985 the due amount of tax was paid to the Corporation.

(ii) On 03-12-1985, the appellant and other members of his staff came to the house of Chappanbhai. They started the work of giving water connection at his residence. The appellant, during the aforesaid procedure, called Chappanbhai Roshanbhai aside and told him that as the facility of new water connection was given, the old connection would be discontinued. The appellant was told by Chhapanbhai that the new connection was for latrine and it was in no way concerned with the old connection. At the material point of time, the appellant told him, while smiling, if he wanted to continue both the connections, then he should be practical enough to understand something. On the question being put to the appellant by the complainant, the appellant answered the same by demanding a bribe of Rs. 100/- (Rupees One Hundred Only). As the complainant

had no money with him, the appellant told the complainant that on the next day, he will come between 9 AM and 11 AM and he “the complainant” should keep the bribe amount ready with him.

(iii) As the complainant was not inclined to pay the amount of bribe to the accused, he lodged FIR on 04-12-1985 and, thereafter, a trap was arranged. Two *panch-witnesses*, namely, Vedprakash Jagangirprasad Agrawal and Dineshkumar Ramcharan Shah were requisitioned as *panch-witnesses*. The first part of the *panchnama* was, thereafter, drawn at the ACB Office, Ahmedabad City. The raiding party went towards the ST Bus-Station and the complainant and PW 1 stopped near Rajkamal Pan Centre nearby Saraswati *Chawl* while other members of the raiding party took over the position in the vicinity. After sometime, original accused Nos. 1 and 2 approached the complainant and the amount was demanded from the complainant and immediately on payment of money, accused Nos. 1 and 2 were caught red-handed and search of their person was carried out in the presence of *panch-witnesses* and other members of the raiding party. Thereafter, currency note of Rs. 100/- (Rupees One Hundred Only) was recovered from the possession of accused No. 1. The experiment was subsequently carried out with ultra violet

lamp on the currency note and on the hands of accused Nos. 1 and 2 and white shining marks were found on the hands of accused No. 2. The original accused Nos. 1 and 2 were subsequently apprehended and charge-sheeted along with the appellant.

3. As the matter is exclusively triable by the Special Judge, the charge against the accused was framed on 16th June, 1988 *vide* Exh. 7 and the accused pleaded not guilty to the charge levelled against them. The prosecution, therefore, examined following witnesses to prove its case against the accused:

(i) Sanctioning Authority Nandlal Motiram Bijlani as PW 1, at Exh. 20.

(ii) Complainant Babulal Krishanji Marwadi as PW 2, at Exh. 52.

(iii) *Panch-witness* Vedprakash Jagangirprasad Agrawal as PW 3, at Exh. 58.

(iv) Investigation Officer Kanchanlal Ratilal Jadav as PW 4, at Exh. 61.

The prosecution has also produced the following documentary evidence:

(i) Sanction Order at Exh. 31.

(ii) Letter of sanction at Exh. 33.

(iii) Letter of Commissioner to the Mayor of Ahmedabad at Exh. 34.

(iv) Service-Book of accused Nos. 1, 2 and 3, at Exhs. 41, 42 and 43 respectively.

(v) Statement of salaries received by accused, at Exh. 49.

(vi) Application for getting the water connection from the Municipal Corporation, at Exh. 54.

(vii) Complaint given by Babulal Krishanji Marwadi, at Exh. 55.

(viii) Receipt given by Ahmedabad Municipal Corporation in respect of the tax paid by Chappalbhai Roshanlal and Saiyyed Jalaluddingulam Shah, at Exhs. 56 and 57 respectively.

(ix) *Panchnama* with regard to the trap, at Exh. 59.

(x) Zerox copy of the Muster Roll of labourers, at Exh. 67.

(xi) Form for providing water connection, at Exh. 69.

(xii) Letter dated 05-12-1985 written by the appellant to the Deputy City Engineer in respect of water connection, at Exh. 71, etc. to prove its case.

4. At the conclusion of the trial, further statements of the appellant and two accused, namely, accused Nos. 1 and 2 were recorded under Section 313 of the Code of Criminal Procedure. Accused No. 3 gave a written reply along with his further statement and he had examined two defence witnesses, namely, Narendrasinh Jala as DW 1 and A. H. Malek, Deputy Director of ACB as DW 2.

5. On appreciation of the entire evidence on record of the case, the learned Special Judge held that the appellant on 03-12-1985 demanded a sum of Rs. 100/- (Rupees One Hundred Only) and agreed to accept the same. It was further held by the learned Judge that accused – original accused No. 2 accepted the sum of Rs. 100/- (Rupees One Hundred Only) from the complainant Babubhai Krishnaji Marwadi on 04-12-1985 on behalf of the appellant. As the sum received by original accused No. 2 on behalf of the appellant was other than legal remuneration as a motive or reward, the appellant cannot be wriggled out from the offences punishable under Sections 5(1)(d) and 5 (2) of the Prevention of Corruption Act as well as Section 161 IPC. The learned Judge further held that since the demand was made by the appellant and the amount in question was accepted on behalf of the appellant, original accused Nos. 1 and 2

cannot be held liable, but since the demand was made by the appellant, a presumption can be raised under Section 4 of the Prevention of Corruption Act, 1947. The deposition adduced by the prosecution also corroborates the complaint given by the complainant *vide* Exh. 55, indicating the involvement of the appellant in the commission of offence and, therefore, the learned Judge held that, though the original accused Nos. 1 and 2 could not be held liable for the offences under Section 5(1)(d) as well as Section 5(2) of the Prevention of Corruption Act, 1947 and Section 161 IPC, the appellant could not be acquitted, as the prosecution proved the entire link connecting the appellant with the commission of the offence. The secret deal, which the appellant entered into with the complainant, was not in the knowledge of original accused Nos. 1 and 2 and, therefore, the learned Judge gave the benefit of doubt and acquitted accused Nos. 1 and 2 and fastened the liability on the appellant. In view of the aforesaid findings, the learned Judge held the appellant guilty for the offences punishable under Section 5(1)(d) read with Section 5 (2) of the Prevention of Corruption Act, 1947 as well as under Section 161 IPC, giving rise to the present appeal.

6. This Court has heard Mr. K. J. Shethna, learned

Counsel of the appellant and Mr. I. M. Pandya, learned Additional Public Prosecutor for the State, at length and in great detail. This Court has also undertaken a complete and comprehensive appreciation of all vital features of the case as well as the entire evidence on record with reference to broad and reasonable probabilities of the case.

7. Mr. K. J. Shethna, learned Counsel on behalf of the appellant, submitted that the judgment and order of conviction rendered by the learned Judge is bad in law and against the weight of evidence. In the instant case, the amount was not accepted by the appellant and when there is no acceptance of the amount by the appellant, a presumption under Section 4 of the Prevention of Corruption Act would not arise. It is the case of the complainant that original-accused Nos. 1 and 2 from the very initial stage demanded the bribe amount on behalf of accused No. 3. If the contents of the charge at Exh. 7 are perused along with the evidence relied upon by the prosecution, then there is material variance and it is obviously going to cause serious prejudice to the appellant. Further, it is submitted that from the oral and documentary evidence, it becomes clear that the appellant has been falsely implicated in the case. In

fact, there was no reason for the appellant to demand the amount of bribe. The story of the complainant that the demand of bribe was made by the appellant is not even corroborated by any independent evidence. The story of the prosecution with regard to the demand of the bribe amount by the appellant is, to say the least, improbable, and, therefore, it cannot be accepted. In fact, the amount of bribe received by original accused No. 2 and pocketed by accused No. 1 are both acquitted. The basic ingredients of demand, offer and acceptance are not established by the prosecution, and as the vital link connecting the accused with the commission of offence is not established by the prosecution, the appellant requires to be acquitted. The learned Advocate submitted that when the story of demand made by the appellant is not established, as there are many chinks in the armour of the prosecution case, the benefit of the same requires to be given to the appellant. Further, on perusal of the evidence, the complainant was given definite instructions that only when the bribe amount was demanded by the appellant, then he should give the currency notes to him. Further, on perusal of the entire evidence, new story had developed whereby the demand, which was made by the appellant, of the bribe amount was accepted on behalf by original accused Nos. 1 and 2. Even the deposition

adduced by the complainant, if perused along with the complaint given by him, does not transpire the necessary confidence so as to indicate the involvement of the appellant in the commission of offence. The learned Advocate submitted that there are apparent contradictions in the deposition adduced by the complainant at Exh. 52 and the complaint given by him at Exh. 55 and, therefore, benefit of the same requires to be given to the appellant. DW 1 Abdulgani A. Malik, Assistant Director, ACB, Ahmedabad Unit, has been examined with a view to prove the letter at Exh. 65 which was written by him to the appellant asking him to appear before him on 05-10-1987 while DW 2 Jala has been examined *vide* Exh. 60, who was, at the relevant time, working as an Assistant Engineer in the Corporation. He has been examined with a view to prove the document produced at Exh. 70 to the prosecution case, but on perusal of that deposition and other oral depositions which are relied upon by the prosecution, the case against the appellant has not been firmly established by the prosecution and since the entire link connecting the appellant with the commission of offence has not been established by the prosecution by adducing cogent, convincing and conclusive evidence, the appellant is required to be acquitted. The *panchas* selected in the present case cannot be said to be

independent witnesses as they are selected by the ACB Officers, who are having some sort of link or connection with the *panchas* and, therefore, the benefit of same requires to be given to the appellant. The learned Counsel submitted that as there is no direct evidence regarding demand of bribe amount, offer as well as acceptance, the appellant cannot be convicted on the reasoning that the demand was made by the appellant and the bribe amount was accepted on his behalf by original accused No. 2. The two accused, namely, accused Nos. 1 and 2 were acquitted by the learned Judge and the appeal preferred by the State against the acquittal was also summarily dismissed at the time of admission by the Division Bench of this Court in Criminal Appeal No. 179 of 1989 (Coram: M. B. Shah and K. J. Vaidya, JJ.) on 11-07-1989. The Division Bench held that the order of acquittal passed by the learned Judge cannot in any way be said to be illegal or erroneous which would call for interference and, therefore, the appeal preferred against original accused Nos. 1 and 2 came to be dismissed by the Division Bench of this Court. The learned Counsel submitted that when there is no direct evidence against the appellant indicating that he had demanded the bribe amount from the complainant, he cannot be convicted for the offences for which he has been charged. Thus, the

learned Advocate submitted that in view of the oral deposition adduced by the prosecution and the documentary evidence on which reliance is placed by the prosecution, the appellant requires to be given benefit of doubt and he be acquitted for the offences for which he has been charged under Section 5 (1) (d) and Section 5 (2) of the Prevention of Corruption Act as well as under Section 161 IPC.

8.1 Mr. I. M. Pandya, learned Additional Public Prosecutor representing the State, has submitted that the prosecution has examined the complainant PW 2, Babubhai Krishanji Marwadi, at Exh. 52. The complainant in his deposition has stated that the amount of bribe to the tune of Rs. 100/- was demanded by the appellant and necessary corroboration in that regard is forthcoming if the deposition is perused along with complaint at Exh. 55. The appellant was working in the Municipal Corporation on the date of the incident and, therefore, necessary sanction was required to be obtained. The order of sanction was passed by the concerned officer and with a view to prove that sanction was properly given, the prosecution has examined PW 1, Nandram Motiram Bijlani, at Exh. 20. Thus, on perusal of deposition by Mr. Bijlani, it becomes clear that before initiating

prosecution against the appellant, all necessary steps were taken. Therefore, the learned Additional Public Prosecutor submitted that before launching the prosecution against the appellant, proper sanction was accorded by the concerned officer.

8.2 PW 3 Vedprakash Jahangirbhai Agarwal has been examined *vide* Exh. 58. After going through the formality of introduction with the complainant and other members of the raiding party, the raid was carried out and when the raid was carried out, opponent No. 2 was caught red-handed with the bribe amount and on further perusal of his deposition, it becomes clear that the amount of bribe to the tune of Rs. 100/- was accepted by him on behalf of the appellant and, therefore, the appellant cannot be wriggled out from the offences for which he has been charged as the necessary corroboration is forthcoming through the deposition of the *panch-witnesses* Vedprakash Jahangirprasad Agrawal. On further appreciation of the deposition adduced by the panch-witness, it becomes clear as to how the raid was arranged and carried out. The deposition of the *panch-witnesses* further establishes the involvement of the appellant in the commission of offence.

8.3 The prosecution has examined PW 4 Kanchanlal Ratilal Jadav *vide* Exh. 61. As per his deposition, he was working as Police Inspector in the ACB Office at Ahmedabad. The complaint was given by Babubhai Krishanji Marwadi on 04-12-1985. After recording the complaint, as the trap was required to be laid, two *panch-witnesses* were requisitioned and thereafter, on the production of Rs. 100/- note by the complainant, the same was smeared with Synthetic Powder and the number of the note was noted down in the *panchnama*. Necessary instructions were also given to the complainant. First part of *panchnama* was prepared in ACB Office. As per the say of this witness, on trap being arranged, accused No. 2 was caught red-handed while accepting the bribe amount. Thus, his deposition provides necessary corroboration to the prosecution case.

8.4 On overall perusal of the deposition adduced by the prosecution and documentary evidence, such as the complaint, the *panchnama*, etc. the learned Additional Public Prosecutor has contended that as the prosecution has established the involvement of the appellant in a conclusive manner and also the entire link connecting the appellant with the commission of offence, the judgment rendered by the learned Judge does not call for

interference in the appeal and it requires to be upheld.

9.1 On re-appreciating the entire evidence on record of the case, the complainant, Babubhai Krishnaji Marwadi, PW 2, who gave the complaint *vide* Exh. 52, stated in his deposition that for the purpose of obtaining new connection he had obtained necessary form from the Corporation. After filling up the form, the signature of Chhapanbhai was obtained. He had identified the form and the signature which was shown to him during the course of the deposition. Further, he has deposed in his testimony that after submitting the form in the Corporation, the Ward Inspector Mr. Pandya came to the place to make necessary enquiry and he gave the instructions to pay up the remaining amount of tax. The remaining amount of tax was paid on 02-12-1985 and he has also issued notice in that regard by the Corporation. At the time of giving new water connection, the appellant called him aside and had a talk with the appellant and at the material point of time, the demand of Rs. 100/- was also made by the appellant. As he was not having Rs. 100, he had agreed to pay the same on the next day between 9 to 11 in the morning. On further perusal of the deposition adduced by the complainant, it becomes clear that he had not mentioned the exact place where the

appellant was supposed to come on the next day. The talk, which had transpired between the complainant and the appellant and mentioned in paragraph-8 of the deposition, is not reflected in the *panchnama* produced at Exh. 59. It has been stated by Babulal in paragraph-8 of the deposition that Mr. Pandya had gone in a round and accused Nos. 1 and 2 told him that they had come in connection with the talk which he had with the appellant and accused Nos. 1 and 2 demanded the amount on behalf of the appellant. This contradiction in the deposition of Babubhai and the *panchnama* produced at Exh. 59 is glaring and goes to the root of the matter. As far as the demand is concerned, complainant Babubhai Marwadi is the main witness who has been examined by the prosecution. *Panch-witness* Vedprakash Jahangirprasad Agarwal at Exh. 58 no doubt supports the raid and the procedures carried out before the raid and subsequently, after the raid. The Investigating Officer Ratilal Jadav PW 4 at Exh. 61 also supports the prosecution case with regard to the raid and the procedure prior to the raid and subsequent to the raid carried out in the presence of *panch-witnesses*. But on overall re-appreciation of evidence adduced by prosecution, the basic ingredients of demand, offer and acceptance has not been clinchingly established. The demand made by the appellant is also not fully

established through the deposition of the complainant as well as the complaint because of the glaring discrepancies in the deposition adduced by the complainant and in the complaint. The offer and acceptance of bribe amount was done, as per the prosecution case, at the behest of the appellant by accused Nos. 1 and 2, who came to be acquitted by this Court as per the discussion in earlier part of the judgment in Criminal Appeal No. 179 of 1989 (Coram: M. B. Shah and K. J. Vaidya, JJ.) on 11-07-1989.

9.2 Section 4 of the Prevention of Corruption Act, 1947 provides for presumption where the public servant accepts the gratification other than legal remuneration. It is stated therein that, where in any trial of an offence punishable under Section 161 or Section 165 of the Indian Penal Code, it is proved that an accused person has accepted or obtained, or has agreed to accept or attempted to obtain, for himself or for any other person, any gratification or any valuable thing from any person, it shall be presumed unless the contrary is proved that he accepted or obtained, or agreed to accept or attempted to obtain, that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in the said Section 161, or, as the

case may be, without consideration or for a consideration which he knows to be inadequate. Thus, the presumption can be raised once the acceptance of gratification other than legal remuneration is proved by the prosecution. In the instant case, the acceptance, as per the prosecution case of the bribe amount, was made by original accused No. 2 and the amount which was accepted by accused No. 2 was handed-over to accused No. 1. Original accused Nos. 1 and 2 came to be acquitted because of lack of evidence against them and that leaves only the present appellant, who as per the prosecution case, had demanded bribe amount from the complainant. But, unfortunately, the prosecution has not satisfactorily established the demand made by the appellant of the bribe amount of Rs. 100/-. If the deposition adduced by the complainant is perused along with the deposition adduced by the *panch-witness* and the Investigating Officer, then the same does not inspire confidence of the Court indicating the involvement of the appellant in the commission of the offence. When the necessary corroboration to the prosecution story is not forthcoming in the matter, save and except the deposition of the complainant, then it would be hazardous to upheld the conviction against the appellant. Moreover, the basic ingredients of demand, offer and acceptance, which are required to be

established by the prosecution by adducing cogent, convincing and clinching evidence, has not been established to prove the involvement of the appellant in the commission of offence. Where the appellant-accused is involved in a serious offence and demanding the bribe amount, it is incumbent upon the prosecution to establish the case against the appellant beyond all reasonable doubt. It is also *sine qua non* for the prosecution to establish each and every link connecting the appellant with the commission of offence for which he has been charged. Thus, on re-appreciation of the reasoning given by the learned Special Judge, the case against the appellant has not been firmly established by the prosecution and, therefore, benefit of same is required to be given to the appellant.

10. In view of the foregoing discussion, the appeal is allowed. The appellant is acquitted. The judgment rendered by the learned Special Judge dated 24th June, 1989 convicting the appellant for the offences punishable under Section 5 (1) (d) read with Section 5 (2) of the Prevention of Corruption Act, whereby the appellant is ordered to undergo imprisonment of 1 year and fine of Rs. 200/- (Rupees Two Hundred Only), in default sentence of RI for 2 months, and under Section 161 of the Indian

Penal Code, RI of 1 year and fine of Rs. 200/- (Rupees Two Hundred Only), in default RI for 2 months, is hereby quashed and set aside. *Muddamal* be disposed of in terms of directions given by the learned Special Judge in the impugned judgment. Bail bond shall stand cancelled.

[H. B. ANTANI, J.]

/shamnath